No. 11065-I-Lab-70/34170.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Krishana Iron Foundry and Engineering Works, Samalkha (Karnal):—

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA
FARIDABAD

Reference No. 50 of 1970

between

The workmen and the management of M/s Krishana Iron Foundry and Engineering Works, Samalkha (Karnal)

Present:

Shri Raghbir Singh, for the workmen.
Shri Roshan Lal Gupta, for the management.

AWARD

Relations between the workmen and the management of M/s Krishana Iron Foundry and Engineering Works, Samalkha (Karnal), have not been good for quite some time. The workshop section of the respondent concern remained closed from 4th January, 1969 to 5th July, 1969. The workmen were re-employed but the management took their thumb-impressions or signatures on a number of papers by which their conditions of service were changed for the worse. One of the conditions on which the thumb-impressions or signatures of the workmen were obtained was that their employment was for a limited period that is up to 31st December, 1969 only. It however does not appear that the workmen were aware of this condition. There was a settlement between the parties dated 10th July, 1969 copy marked Ex. M.1/53 in which there is no mention of any intention to change the service condition or fix the period of service. The management also took action againt some of their workmen upon which the Engineering and Textile Workers Union, Panipat, took up the case of the harassed workmen and served a strike notice. This notice is dated 3rd December, 1969 and has been marked Ex. W.1 for the purpose of reference. The workmen struck work with effect from 25th December, 1969 but the strike was called off on 2nd January, 1970 and the Conciliation Officer wrote to the management that since the strike had been called off the management should resume the working of the factory and in case no work was provided to the workmen it would be presumed that the management have locked out the factory without observing the statutory requirements. This letter has been marked Ex. W.2 for the purpose of reference. It appears that the management took no notice of this letter and refused to restart the factory upon which the workmen served a demand notice, dated 7th January, 1970 in which it was alleged that the management had illegally and without any prior notice locked out the factory with effect from 3rd January, 1970. It was also alleged that the management had previously closed the workshop section of the factory from 4th January, 1969 to 5th July, 1969 with a *mala fide* intention of changing the service conditions of workers. The workmen Sarvshri Khem Chand, Nakli Ram, Khazan Singh, Karam Singh, Ram Singh, Ram Karan, Lakhmi Chand who had joined duty as per the term of settlement dated 10th July, 1969 also complained that their signatures or thumb-impressions had been taken fraudulently on a paper on which a specific date for the termination of their service is mentioned. It was alleged that it was malpractice because all these workmen were doing the job of a permanent nature and it was therefore prayed that the papers on which signatures or thumb-impressions had been obtained fraudulently be cancelled and the workmen concerned declared to be permanent.

A couple of other demands were also made but we are not concerned with the same in the present reference. Conciliation proceedings were initiated but with no success. Accordingly the Governor of Haryana in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act referred the following items of dispute to this Tribunal for adjudication *vide* Gazette Notification No. ID/7524, dated 12th March, 1970 :—

(1) Whether the lock-out closure of the factory was justified and in order ? If not, to what relief are the workmen entitled ?

(2) Whether the action of the management in closing the Workshop Section from 4th January, 1969 to 5th July, 1969 was justified and in order ? If not, to what relief the workmen are entitled ?

(3) Whether the management got signatures of Sarvshri Khem Chand, Nakli Ram, Ram Singh, Khazan Singh, Karam Singh, Lakhmi Chand and Ram Karan on blank papers fraudulently and converted these papers into their appointment letters for specified period ? If so, to what relief are these workmen entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a lengthy statement of claim was filed on behalf of the workmen and the management filed their written statement which is equally lengthy. The workmen in the statement of claim have given in detail the mal practices indulged in by the management. It is alleged that Provident Fund Scheme was applicable in the respondent company and the management have been deducting the same from the wages of the workmen but never deposited it as provided in the Employees Provident Fund Act, 1952 (Act 19 of 1952). Secondly the management did not give earned leave as provided under the Factories Act nor did they give any casual, festival or sick leave as provided in the Punjab Industrial Establishments National and Festival Holidays and Sick Leave Act, 1965. Thirdly it is alleged that the management used to temper with the entries in the attendance register and showed the workmen who had actually attended to their duty as on leave for the purpose of forfeiting their right of leave. It is alleged that in order to check these malpractices

and protect their legal rights the workmen formed a union in November, 1968 and also made a demand for bonus for the year 1967 which annoyed the management and they locked out the workshop section of the factory with effect from 4th January, 1969 but after a prolonged struggle the management agreed to pay retrenchment compensation and to re-employ the retrenched workers. Accordi g to the workmen the management were acting with *mala fide* intentions and they did not call the workmen concerned for re-employment and offered th m re-employment after another long struggle which resulted in a settlement dated 10th July, 1969 under section 12(3) of the Industrial Disputes Act but the management even then were not ready to pay the revised minimum wages to the workers. It is alleged that at the time of re-employment the management did not mention that there would be any change in the conditions of service or that the re-employment would be for a fixed period and they also started victimising the workmen. So a notice of strike had to be given and the workmen struck work on 25th December, 1969 but the strike was called off at the intervention of the Conciliation Officer who visited the respo ident factory but still the management did not provide a y work to the workers. It is stated that during the conciliation proceedings the management disclosed that the workmen had been reappointed for a specified period only. The case of the workmen is that the management had obtained the signatures of Sarvshri Khem Chand, Nakli Ram, Lakhmi Chand, Ram Singh, Khazan Singh, Karam Singh and Ram Krishan workmen fraudulently by misrepresenting that they had to execute the necessary forms as required under the Employees Provident Fund Act, 1952 but they have converted these writing as appointment letters, for a fixed period so that the workmen may lose the right to continue in employment. It is alleged there was no justification for employing the workm n for a specified period because the respondent factory is not seasonal factory.

In brief the case of the workmen is that the closing of the workshop section from 4th January, 1969 to 5th July, 1969 was not justified and it was done with the intention of getting rid of the workmen and for keeping them in suspense. Secondly the management closed the workshop on 4th January, 1969 and again locked out closed the factory with effect from 3rd January, 1970 with a *mala fide* intention of nullifying the pending case before the arbitrator at Sonepat. According to the workmen these methods were adopted to victimise the workmen because they had become members of a union and to deprive them of their legal rights. It is prayed that the lock-out of the factory be declared illegal and the workmen paid full wages from 3rd January, 1970 till the date the work is provided to them *incl*uding all benefits such as continuity of service, bonus and leave etc. It is also prayed that the action of the management in closing the workshop section from 4th January, 1969 to 5th July, 1969 be declared to be unjustified and illegal and the affected workmen paid their full wages. The last prayer is that it be declared that the appointment letters issued in favour of Sarvshri Khem Chand, Nakli Ram, Ram Sarup, Khazan Singh, Karam Singh, Lakhmi Chand and Ram Saran are null and void as these letters have been obtained fraudulently and the workmen concerned be declared as permanent workers of the factory.

The management in their written statement have raised a preliminary objection that the Government was well aware that the services of the workmen were for a fixed period that is up to 31st December, 1969 only after which their services automatically came to an end. It is alleged that the Government reached this decision after going through the documentary evidence and conveyed this decision *vide* their letter No. 33139-42, dated 2nd December, 1969 (copy marked Ex. M.W. 1/54) and so the making of the present reference is clearly *mala fide*. It is alleged that the workmen adopted coercive methods by threatening Dhar a before the office of the Conciliation Officer and for this reason the Conciliation Officer made a recommendation in favour of the workmen. According to the management the entire factory including the workshop section was closed on 4th January, 1969 and the workmen were paid compensation under section 25FFF. It is alleged that the closure was challenged by the union but they could not substantiate their demand and it was rejected by the Government. The management decided to restart the factory for a limited period and although there was no legal binding on the management to call the old workmen for re-employment still notices were issued to the Moulders and it was clearly specified in the notice that the factory would work up to 31st December, 1969 only. It is alleged that the workmen concerned accepted this offer in writing. Accordingly they were supplied with application forms which they submitted duly filled in and the appointment letters were issued to them in the presence of the Secretary of the union who received a copy under his own signatures and that of the workmen. It is alleged that the work in the moulding section was started some time in June, 1969. As regards the workmen in the workshop section it is pleaded that they could be employed only after the goods in the moulding section had been made ready for processing, but the workmen were impatient and on 2nd June, 1969 they served a notice of demand complaining that they had withdrawn their demand against the lock-out of the factory on 4th January, 1969 only on the assurance that the workmen would be re-employed. It is pleaded that during the course of the conciliation proceedings the correct position was explained and a settlement dated 10th July, 1969 was arrived at by which the management undertook to restart the workshop with immediate effect, and the union *vide* clause (viii) of the agreement agreed not to raise any demands pertaining to "the gone by period" and therefore the order of reference with regard to second item which relates to bygone period is barred by the settlement. As regards the third item of dispute it is pleaded that any demand based on the plea that the signatures of the workmen were taken on blank pape s fraudulently by itself does not constitute an industrial dispute and the matter can be taken up under the Indian Penal Code before an appropriate Court.

As regards the grievance of the workmen with regard to the change in the conditions of their service after re-employment it is pleaded that re-employment does not mean employing on old conditions although the workmen were employed on higher wages. As regards employing the workmen up to 31st December, 1969 only it is pleaded that the management have unfettered right to run a factory for any period they like and this decision of the management cannot be called into question and so the plea of the workmen that the respondent factory is not a seasonal

factory has no relevancy. It is pleaded that once the factory is closed, the closure admitted, compensation paid, and re-employment agreed, then these questions cannot be reagitated and therefore the claim that the closing of the workshop section from 4th January, 1969 was not justified is quite meaningless. It is pleaded that closure from 4th January, 1969 was duly notified and the closure from 31st December, 1969 was predetermined at the time of restarting therefore their could be no question of justification or non-justification of closure. The claim of the workmen for wages after the closure is opposed on the ground that the employment of the workmen can only be considered in a running factory and not in a closed concern. The plea of the management therefore is that the entire claim of the workmen is based on *mala fides*, concocted and wrong versions of the union.

The pleadings of the parties gave rise to the following issues :—

1. Whether the reference is *mala fide* and if so what is its effect ?

2. Whether the reference with regard to item No. 2 is barred by reason of settlement dated 10th July, 1969 ?

3. Whether the lock-out/closure of the factory was justified and in order? If not, to what relief are the workmen entitled ?

4. Whether the action of the management in closing the workshop section from 4th January, 1969 to 5th July, 1969 was justified and in order ? If not, to what relief the workmen are entitled ?

5. Whether the management got signatures of Sarvshri Khem Chand, Nakli Ram, Ram Singh, Khazan Singh, Karam Singh, Lakhmi Chand and Ram Karan on blank papers fraudulently and converted these papers into their appointment letters for specified period ? If so to what relief are these workmen entitled ?

6. Whether item No. 3 of the order of reference cannot be adjudicated upon because it does not fall within the definition of the Industrial Dispute ?

Issue No. 1

As already pointed out the validilty of the order of reference is challenged on the ground that the Government had already accepted the stand of the management that all the workmen had been employed only up to 31st December, 1969 and their services automatically came to an end on the expiry of the period of their employment and this decision was conveyed to the parties *vide* their letter No. 33139-42, dated 2nd December, 1969 marked Exhibit M. 1/54. It is pleaded that the present reference has been made *mala fide* because the union adopted coercive methods by threatening Dharana before the office of the Conciliation Officer and for this reason he was compelled to make a report in their favour. In my opinion it is not open to any party to probe into the reasons which prompt the Government to make a reference. Further I am of the opinion that all that the management have been able to establish is that the Government refused to refer any of the demands which the workmen made in their demand notices dated 6th June, 1969 and 12th June, 1969 and the reasons for refusal to make the reference are contained in the letter Exhibit M. 1/54 dated 2nd December, 1967. It is on the basis of the reasoning contained in the letter Exhibit M. 1/54 that the management have challenged the *bona fides* of the present reference. We need not however go into the soundness of the reasons contained in the letter Exhibit M. 1/54 which is dated 2nd December, 1969 because the disputes raised in the demand notices dated 6th June, 1969 and 12th June, 1969 had already been settled *vide* settlement dated 10th July, 1969 copy Exhibit M. 1/53. It appears that this fact was not brought to the notice of the Government and the parties also perhaps did not choose to put up their case before the Government and the Government while refusing to refer the demands for adjudication which has already been settled by simply reproducing the objections with the management must have given when the demands were originally raised. Further now the main dispute between the parties is with regard to the validity of the lock-out/closure of the factory with effect from 3rd January, 1970. The workmen have challenged the validity of this closure lock-out of the factory *vide* their demand notice dated 7th February, 1970. The Government could not have considered the propriety of this demand notice in the month of December when the letter Exhibit M. 1/54, dated 2nd December, 1969 was issued. The management have also not led any evidence to prove any *mala fides* on the part of the Government. There is no evidence that the union threatened Dharna before the office of the Conciliation Officer and for this reason he was pressurised to make a recommendation that the demands of the workmen be referred for adjudication. It is therefore not correct to say that the order of reference is illegal or *mala fide*. To what extent the contention of the learned representative of the management that the workmen have no *locus standi* to challenge the closure of the factory with effect from 3rd January, 1970 because their services automatically came to an end on the afternoon of 31st December, 1969 has force would be considered in detail while discussing issue No. 3. With these remarks I find issue No. 1 in favour of the workmen.

Issue No. 2

A copy of the settlement dated 10th July, 1969, marked Exhibit M. 1/53 is duly proved by Shri Roshan Lal, M.W. 1, partner of the respondent concern. The factum of this settlement is also admitted on behalf of the workmen. *Vide* clause (viii) of the settlement the union have agreed not to raise any demand pertaining to the "gone by period". It is therefore rightly submitted by the learned representative of the management the workmen cannot now question the validity or the propriety of the action of the management in closing their workshop section

from 4th January, 1969 to 5th July, 1969 because all the disputes pertaining to the period prior to 10th July, 1969 have been settled between the parties by virtue of the settlement dated 10th July, 1969. The learned representative of the workmen pointed out that in their notice. of demand dated 7th February, 1970 on the basis of which the present reference has been made the workmen never questioned the validity of the actior of the management in closing the workshop section of the factory from 4th January, 1969 to 5th July, 1969. In their notice of demand the workmen have simply complained that the management had closed the workshop section of the factory from 4th January, 1969 to 5th July, 1969 with a *mala fide* intention to change the service condition of the workmen. Thus the workmen were not objecting to the justification or non-justification of the closure of the workshop section but their real grievance is that the management taking advantage of the closure of the workshop section changed the service conditions of their workmen at the time of their re-employment. However, it is not possible for this Tribunal to amend the order of reference in order to bring out the real dispute between the parties. Item No. 2 of the order of reference as worded simply requires the Tribunal to adjudicate upon the question whether the action of the management in closing the workshop section from 4th January, 1969 to 5th July, 1969 was justified and in order and if not, to what relied the workmen are entitled ? The learned representative of the management is technically correct when he says that this dispute which is the subject-matter of item No. 2 of the order of reference is covered by settlement dated 10th July, 1969 and the workmen are not now competent to raise any demand pertainig to the period prior to 10th July, 1969. With these remarks I decide this issue in favour of the management.

Issue No. 4

It would be convenient to take issue No. 4 at this stage. In view of my findings on issue No. 2 it is not possible to give any finding with regard to the justification or non-justification of the closure of the workshop section from 4th January, 1969 to 5th July, 1969. I, therefore, refrain from deciding this issue.

Issue No. 3

This is the main dispute between the parties. The first contention of the learned representative of the management is that it is a fundamental right of a party to carry on or not to carry on any business and the management cannot be compelled to re-start the factory if they do not wish to do so and, therefore, it is not open to the Tribunal to adjudicate upon the justification or non-justification of the closure of the factory, as this is a matter exclusively within the discretion of the management, and the Tribunal can adjudicate only upon the illegality or otherwise of a lock-out. In my opinion the submission of the learned representative of the management is not correct. The subject "retrenchment of workmen and closure of establishment" falls under item No. 10 of the Third Schedule of the Industrial Disputes Act. Therefore, this Tribunal has jurisdiction to adjudicate even upon the validity of the closure of the factory.

With regard to the justification of the closure of the factory the learned representative of the management has drawn my attention to the evidence of Shri Roshan Lal, M.W. 1, partner of the respondent concern which was recorded on 13th July, 1970. In his evidence Shri Roshan Lal has stated that there were some differences amongst the partners of the respondent concern and there was also lack of demand in the market and for this reason the working of the factory could not be carried on and a notice dated 4th December, 1968, copy Exhibit M.W. 1/1 was given to the workmen that the factory would be closed with effect from 4th January, 1969 and in accordance with this notice the factory was actually closed on 4th January, 1969 and the services of the workmen were terminated after paying them their legal dues. In order to prove these payments the witness produced the receipts marked Exhibit M.W. 1/2 to Exhibit M.W. 1/30. The statement of the witness was continued on 14th July, 1970. On this date the witness proved the receipts obtained from the workmen in the payment of Wages Register as well. As regards the re-starting of the factory with effect from 10th July, 1969 the wtiness has stated that before re-starting the factory a notice copy Exhibit M.W. 1/31 was given to all the workmen and in reply to this notice ten or eleven workmen gave their replies which were on printed forms, some of which have been produced and are marked Exhibit M. W. 1/32 to Exhibit. M.W. 1/37. The witness has also produced the applications forms Exhibit M.W. 1/38 to Exhibit M.W. 1/44 which were taken from the workmen who expressed their desire to rejoin the respondent concern and the appointment letters marked Exhibit M.W. 1/45 to Exhibit M.W. 1/59 were given to them.

On the basis of the above evidence and the admission said to have been made by the representative of the workmen, during the arbitration proceedings held by Shri Kamal Singh, Labour-cum-Conciliation Officer that the closure of the factory from 4th January, 1969 to 5th July, 1969 was not *mala fide* it is submitted by the learned representative of the management that it is now too late in the day to dispute the bona fides of the closure of the workshop section of the factory from 4th January, 1969 to 5th July, 1969 and that the final closure of the factory with effect from 3rd January, 1970 was a logical consequence of the terms on which the workmen were re-employed and the factory was re-started.

I have carefully considered the submissions of the learned representative of the management and in my opinion there is only a paper closure of the respondent concern and their factory is still working. The management have simply adopted the device of giving the factory on lease in order to deprive the workmen of their legitimate rights and to victimise them. Shri Roshan Lal, M.W. 1, Partner of the respondent concern in his evidence gives the following two reasons for closing their concern:—

(i) differences amongst the partners.
(ii) lack of demand in the market.

A close look into the evidence of Shri Roshan Lal M.W. shows that both these reasons are incorrect. So far as the alleged differences between the partners are concerned Shri Roshan Lal in his examination chief did not not even bother to disclose what those differences were. When pressed to disclose the alleged differences during his cross-examination, Shri Roshan Lal stated that one of their partner Shri Suraj Bhan started another factory known by the name of Suraj Khandsari Udyog and for the purpose of carrying on this business he withdrew lot of capital from the respondent concern as a result of which the capital of the respondent concern was reduced and the services of Shri Suraj Bhan Partner also ceased to be available to the respondent concern. In case Shri Suraj Bhan had in fact withdrawn his capital from the respondent concern in an unauthorised manner as stated by the witness, it should not have been difficult for the respondent to prove this fact by documentary evidence. Further there is no evidence that Shri Suraj Bhan was ever associated in the actual management of the respondent concern. On the contrary Shri Roshan Lal M.W. says that he had been himself appointing and terminating the services of the workmen. Further no evidence has been produced with regard to the alleged fall in demand. If in fact there was a fall in demand the management could have easily proved this fact by showing that their stocks had accumulated and there was no demand for them, but this has not been done. Apart from the oral testimony of Shri Roshan Lal the management have not taken the trouble of producing any corroborative evidence although the evidence of Shri Roshan Lal could have been easily corroborated by documentary evidence.

The fact that the so-called closure of the factory was not genuine is also proved by the fact that Shri Roshan Lal says in his evidence that the respondent factory used to be closed every year for 10 or 15 days because the management were required to prepare their balance-sheet on 31st March of every year and therefore they had to close the factory to enable them to prepare a balance-sheet. Shri Roshan Lal says that they used to give a formal notice to the workmen terminating their services and when the factory was re-started the old workmen were re-employed. This shows that from the very start the attempt of the respondent concern has been not to allow their workmen to have continuity of service so that they may not acquire any rights. It appears that the factory must have been closed from time to time in order to punish the workmenfor raising demands and when the business was re-started as a result of settlement dated 10th July, 1969 it appears that the management tried to make a fool proof case and took the signatures and thumb-impression of the workmen on a large number of papers in order to bind them and to ensure that their right to make any further demands was completely taken away. In the printed replies the workmen are supposed to have accepted all the terms on which re-employment was being offered to them. Curiously enough the terms of re-employment which the workmen were supposed to have accepted have not been detailed in the printed replies. This must have been done in order to ensure that the workmen do not come to know on what terms they were being re-employed. The learned representative of the management has drawn my attention to the notice Exhibit M.W. 1/31 in which it is specifically stated that the services of the workmen would come to an end on 31st December, 1969 and has submitted that the terms of employment are clearly specified in this notice. There is, however, no proof that this notice was actually delivered to the workmen concerned. This notice also does not bear any date. The printed replies on which the receipt of this notice is acknowledged by the workmen are dated 26th May, 1969. In these replies the workmen are supposed to have admitted the receipt of the letter dated 16th May, 1969 from the management and also accepted the conditions on which the re-employment was being offered. The management were not satisfied by taking the printed replies. They also made the workmen sign printed formal applications for being taken back into service. These applications are dated 4th June, 1969 and formal letters of appointment were issued to the workmen which are dated 5th June, 1969. If all these transactions had been really effected in the month of May and June, 1969 as sought to be made out then it is not clear what dispute was left between the parties with regard to the re-starting of the factory and what was the need for giving two demand notices dated 6th June, 1969 and 12th June, 1969 and why did the management enter into the settlement dated 10th July, 1969 by which the management undertook to re-start the workshop with immediate effect and to re-employ the workmen within 7 days of the settlement because according to the management they had already decided to re-start the factory and had issued a notice dated 16th May, 1969 which was received by the workmen on 19th May, 1969 and the workmen had already applied on printed forms for being taken back into service and letters of appointment had already been issued to them. The preparation of all these documents, therefore, does not appear to be above suspicion. The circumstances of the case also show that the workmen were not aware that they were being employed for a limited period only. If they had known that their services would come to an end on 31st December, 1969, they would not have given a notice of strike dated 3rd December, 1969 marked Exhibit W. 1 and to go on strike on 25th December, 1969. It would not have been also necessary for the Conciliation Officer to intervene and to persuade the workmen to call off the strike and to call upon the management,—*vide* his letter dated 30th January, 1970 marked Exhibit W. 2 to resume the working of the factory and to provide work to the workers. The Conciliation Officer clearly wrote in his letter that in case the management did not provide work to the workers it would be presumed that they had locked out the factory without observing the statutory requirements. In case there had been a genuine closure of business the necessity for writing this letter would not have arisen.

The management have also not led any evidence to show why they decided to re-start the factory. It is not alleged that the differences between the partners which necessitated the closure of the factory were patched up or that the demand in the market was revived for a temporary period and therefore, the partners decided to re-start the factory. There is also no explanation why the management decided to re-start the factory for a limited period from 10th July, 1969 to 31st December, 1969. There is no suggestion that there were any raw-material left in the factory which the management wanted to consume before finally closing down their business or that there were any pending orders which the management wanted to complete before winding up their affair. The case of the management as it stands in the record is that without any rhyme or reason the management re-started the factory from 6th July, 1969 and decided to work it only up to 31st December, 1969. Thus it is not at all possible to accept

the contention of the learned representative of the management that the re-starting of the factory from 10th July, 1969 to 31st December, 1969 was a bona fide act of the management.

The so-called closure of the factory after 31st December, 1969 also does not appear to be genuine. It is never possible to get any direct evidence of the intention with which a particuler action is done. The intention of a person is normally gathered from the surrounding circumstances and the circumstances of the case clearly establish that it was not the intention of the management to permanently close down their factory after 31st December, 1969. Shri Roshan Lal, M.W. 2, admits in his evidence that even after the so-called permanent closure of the business the telephone connection which was in names of the respondent concern was not got disconnected and that the electric connection which was also in the name of the respondent factory was continued and according to the evidence of Shri S.N. Madan, W.W2., Inspector of Factories, the respondent firm has been applying for the continuation of the licence for working the factory for the year 1968-69 and 1970 and that no information was given to his office with regard to the closure of the factory. It is also in the evidence of Shri S.N. Madan, W.W. 2, Panipat, that he had inspected the factory even on the day previous to the day he appeared in Court to give evidence and found that it was working. The witness, however, explained that he was informed that the persons who were working the factory stated that they had taken it on lease and an application for amendment of licence had been given. According to the information of this witness the name of the lessee was Shri Ram Kumar. In re-examination the witness stated that the lease papers were shown to him by the partner Shri Roshan Lal himself. In view of the statement made by Shri S.N. Madan that the factory was actually working but the person working in the factory represented that the factory had been taken on lease it was considered in the interest of justice to seek clarification with regard to this alleged lease although Shri Roshan Lal Partner in his evidence had tried to suppress the factum of lease altogether. Accordigly further statement of Shri Roshan Lal was recorded and he had to admit that the factory was given on lease on 27th July, 1970,—*vide* lease dated Exhibit M.W. 1/71 on Rs. 1,000 per mensem. All these tactics clearly show that the object of the management was not to close down the business completely but to carry on the work in one garb or other and the so-called closure of the Factory from 31st December, 1969 was done *mala fide* with the object of the depriving the workmen of their legitimate rights.

It is true that according to the terms of the letters of appointment issued in favour of the workmen their services automatically came to an end on 31st December, 1969 but in my opinion the workmen could not be deprived of their right to raise the present industrial dispute if it is held that the decision of the management to work the factory on 10th July, 1969 to 31st December, 1969, was not bona fide. The management cannot deprive the workmen of their right to continue is service by just giving them a letter of appointment for a limited period without any rhyme and reason. If a workman is once employed his service can not be terminated without sufficient cause. I have already held that the so-called closure of the factory on 31st December, 1969 was not bona fide and therefore, it must be held that the services of the workmen did not come to an end automatically and the continue to be in the service of the management. I decide this issue in favour of the workmen.

Issues Nos. 5 and 6

The submission of the learned respressentative of the management is correct that even if it is held that the signatures of the workmen on the letters of appointment were taken on blank papers or by misrepresentation that would not by itself constitute any industrial dispute and therefore, item No. 3 of the order of reference cannot be adjudicated upon. I, therefore, express no opinion on issue No. 5 and find issue No. 6 in favour of the management.

In view of my findings on issue No. 3 I hold that there has been no genuine closure of the factory after 31st December, 1969 and the workmen still continue to be in service of the respondent and are entitled to get their wages. I give my award accordingly.

P. N. THUKRAL.

Dated 6th November, 1970.

Presiding Officer,
Industrial Tribunal., Haryana,
Faridabad.

No. 1594, dated the 11th November, 1970.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Department, Chandigrrh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 6th November, 1970.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11008-I Lab-70/35167.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Usha Rectifier Corporation (India) Ltd., Faridabad.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 104 of 1970

between

THE WORKMEN AND THE MANAGEMENT OF M/S USHA RECTIFIER CORPORATION, (INDIA) LTD., FARIDABAD.

Present :

Shri Bhajan Singh, for the workmen.

Shri D. C. Bhardwaj, for the management.

AWARD

An industrial dispute arose between the workmen and the management of M/s Usha Rectifier Corporation, (India) Ltd., Faridabad and the same was referred to this Tribunal for adjudication,—*vide* Government Gazette notification No. ID/FD/302E/23306, dated 3rd August, 1970. The item of dispute referred for adjudication is as under:—

> Whether the workmen are entitled to uniforms. If so, with what details and from which date ?

On receipt of the reference usual notices were issued to the parties for 2nd September, 1970. On the date fixed Shri Darshan Singh was present on behalf of the workmen and Shri Prem Dutt Jaswal appeared on behalf of the management. The representative of the workmen requested for time to file the statement of claim and on his request time was given to him to file the statement of claim within a week and the case was adjourned to 29th September, 1970, for filing the written statement. On the date fixed no body appeared on behalf of the workmen and the management filed their written statement. The management was therefore directed to produce their evidence and the case was adjourned to 6th October, 1970, for the purpose. On the date fixed one Shri Bhajan Singh appeared on behalf of the workmen and requested for adjournment on the ground that Shri Darshan Singh the authorised representative of the workmen was ill. Since no body had appeared on behalf of the workmen on the previous date nor any statement of claim had been filed and Shri Bhajan Singh who made a verbal prayer for adjournment had no letter of authority to represent the workmen, therefore, the request for adjournment was not accepted and the evidence of the management was recorded.

Shri Prem Dutt Jaswal M. W. I, Administrative Assistant appeared on behalf of the management and stated that the management is already supplying two uniforms to their workmen every year. He stated that they are supplied uniforms consisting of a Bushirt and a Pant of Khaki Zeen since the year 1966. The witness produced a register showing that uniforms are being actually supplied to the workmen.

In view of the evidence given by the management I am of the opinion that there is no case for the workmen for supply of uniforms in addition to the uniforms which are already being supplied to them. I give my award accordingly. No order as to cost.

P. N. THUKRAL,

Dated 20th October, 1970.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad

No. 1456, dated 2nd November, 1970

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes, Act, 1947.

P. N. THUKRAL,

Dated 20th October, 1970.

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 11181-1Lab-70/34964.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad, in respect of the dispute between the workmen and the management of M/s Panipat Co-operative Sugar Mills, Ltd., Panipat.

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 24(A) of 1969

between

THE WORKMEN AND THE MANAGEMENT OF M/S PANIPAT CO-OPERATIVE SUGAR MILLS LTD., PANIPAT

Present.—Shri Raghbir Singn, for the workmen.

Shri C. S. Rana, for the management.

AWARD

The Sugar Mill Mazdoor Sabha served a notice of demands on the management of M/s. Panipat Co-operative Sugar Mills Ltd., Panipat objecting to the termination of the services of the workmen whose names are given in the annexures 'A' and 'B' attached with the notice of demands on the ground that the services of these workmen had been terminated without any reason or giving them any opportunity to show cause. The Sugar Mill Mazdoor Sabha also demanded that equal Sugar to each worker be provided and the workers to whom less sugar has been given in the past should be made up by giving them more sugar in future. It was also claimed that equal incentive bonus amounting to Rs. 1,000 be given to the workers.

None of the aforesaid demands were accepted by the management but the parties mutually agreed that the demands in question be referred to the Presiding Officer of this Tribunal for adjudication. Accordingly the Governor of Haryana in exercise of the powers conferred by sub-section (3) of section 10-A of the Industrial Disputes Act was pleased to publish the arbitration agreement arrived at between the parties.

On receipt of the arbitration agreement, usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the Management filed their written statement. It is pleaded on behalf of the management that the workmen whose names are mentioned in annexure (A) attached to the notice of demands were temporary hands and their services were terminated in accordance with rules and regulations, under which no notice is required to be given to workmen who are employed on temporary basis. As regards the workmen whose names are mentioned in annexure (B) attached with the demand notice, it is pleaded that the services of certain temporary workmen were terminated and the persons whose names are mentioned in annexure 'B' were appointed. The temporary workmen raised an industrial dispute which was in due course referred to the Labour Court and the award of the Court went in favour of the temporary workmen and they had to be reinstated and since the persons whose names are mentioned in annexure 'B' were appointed in place of those temporary workmen, their services had to be terminated in order to make place for the workmen who had to be reinstated under the order of the Court.

As regards the distribution of sugar it is pleaded that the Government of India in the Ministry of Food and Agriculture issues sugar quota for sale to the factory employees and the Government also has desired that the representative of the employees be associated with the distribution of sugar. The case of the management is that there are three registered trade unions in the respondent mill and the distribution of sugar is being done after consultation with the trade union and that two trade unions are satisfied with the present system of distribution but the Sugar Mill Mazdoor Sabha has not approved the present system of distribution with a ulterior notive because it wants to raise the strength of its members by raising unrealistic and far fetched demands. It is s ated that it is not equitable to give equal quota of sugar to all the employees because the seasonal employees work only during the season and for this reason they do not bring their families with them and, therefore, they do not need their full quota of sugar while the permanent employees reside in Panipat with their families throughout the year and, therefore, their need for sugar is more and for this reason the seasonal workers are given only half the quantity of sugar as compared to the quantity given to the permanent workers. With regard to the last demand for equal incentive bonus, it is pleaded that the demand is vague because it is not obligatory on the employer to give incentive bonus to the employees. It is pleaded that bonus is being regularly paid to the workers according to the provision of the payment of Bonus Act.

The pleadings of the Parties gave rise to the following issues :—

1. Whether the workmen whose names are mentioned in annexure A were temporary hands and their services have been terminated in accordance with the rules and regulations?

2. Whether the workmen detailed in annexure B became surplus as a result of the award of the Labour Court. dated 12th November, 1968?

3. Whether equal sugar quantity of sugar should be given to the workmen irrespective of the fact whether they are on regular basis, temporary or seasonal?

4. Whether the workmen are entitled to incentive bonus over and above the bonus which is being given to them under the payment of Bonus Act?

Issue No. 1.—Shri Hem Raj, M. W. 2 Time Keeper of the respondent mill has produced Chart Ex. M. W. 2/1 giving the details regarding the date of appointment and the date of termination of the workmen whose names are given in annexure A and who are said to be temporary hands. The witness has given no reason for the termination of services of these workmen. He says that their services are terminated as a result of the recommendation of the screening committee. In cross-examination the only reason given for treating these workmen as temporary workmen is that these pereons were made to fill up forms which are normally taken from temporay hands. The first question which, therefore, requires consideration is whether these workmen can be said to be temporary workmen. The respondent mill has certified Standing Orders and clause (b) defines the classification of workmen to be employed in the respondent mill Clause (b) lays down that the workmen shall be classed as under :—

(i) Permanent,

(ii) Seasonal,

(iii) Temoprary,

(iv) Probationers,

(v) Apprentices and

(vi) Substitutes.

Sub-clause (iii) of clause A defines a temporary workman as under:—

A" temporary workmen" is one who is engaged for work of a temprary or casual nature or to fill in a temprary need of extra hands or temporary jobs."

As already pointed out Shri Hem Raj who is the only witness produced by the management on this issue does not give even the nature of the work for which these workmen were recruited nor does he say that their services were terminated because the work for which they were recruited was of a temporary or casual nature and work in question was completed and for this reason their services were no longer required. The witness in his evidence, dated the 14th July, 1970 simply produced the letters of appointment marked Exs. M. W. 2/2 to Ex. M. W2/12 which were given to these workmen. These letters of appointment simply state that the workmen have been appointad on purely temporary basis and that their services can be terminated at any time without notice. These letters of appointment do not strengthen the case of the management at all because it was incumbent upon the management to prove that the nature of work for which these workmen were appointed was of a temporary or casual nature and the services were terminated by reason of the completion of the work.

A scrutiny of the chart Ex. M. W. 2/1 also shows that these workmen were probably not appointed on jobs of a temporary or casual nature. For example the first workman Shri Ram Samai is shown so have been originally appointed on 19th November, 1965 and he continued to work till 19th May, 1965. He was again appointed on 1st December, 1966 and he continued to work till 22nd February, 1967. The position of the second workman Shri Kapal Dev is that he was initially appointed as a helper on 12th February, 1966 and he worked till 22nd May, 1966. He was again appointed on 23rd November, 1965 and he worked till 23rd February, 1967. He was again re-called on 9th November, 1967 and he worked till 6th December, 1967. Similarly the third workman Shri Inder Dev worked in four instalments from 1st December, 1965 to 5th December, 1967 with four breaks in service. The fourth and eighth workmen Sarvshri Booli and Dharam Pal had three breaks in their service while the remaining workmen had two breaks in their service. The evidence of Shri Hem Raj, Time-keeper is that after the services of these so called temporary workmen were terminated as many as 10 new workmen were recruited just after one month on permanent basis because by that time the strength of the regular workmen had been raised. The fact that the case of the so called temporary workmen was referred to the screening committee for the purpose of deciding as to whether they should be retained in service or not also raises a suspicion that the management probably wanted to decide which of these workmen should be shunted out because the question of raising the strength of parmanent workmen was then under consideration and the management after raising the strength of permanent workmen employed 10 new workmen. In my opinion, therefore. the termination of the services of these workmen were not justified.

As regard the relief to which these workmen are entitled, the representative of the workmen has not been able to give any reason as to why these workmen have brought forward their claim for reinstatement after such a long delay. The Chart Ex. M. W. 2/1 shows that the services of Shrimati Mahanti was terminated on 17th February, 1967. Shri Rola Ram was turned out on 18th February,

1967, Phool Singh was turned out on 21st February, 1967, Sarvshri Ram Samal, Mam Raj, Bhim Singh, Dharam Pal, Ram Krishan lost their services on 22nd February, 1967. The rest of the workmen were turned out some time in the month of December, 1967. These workmen made a demand for their reinstatement for the first time on 7th February, 1969, i. e., after the expiry of almost two years. If in the interest of industrial peace, security of services has been given to the industrial workers, it does not mean that they can wait indefinately long and bring forward state claims for reinstatement at any time. Unexplained long delay in bringing forward a claim for reinstatement is an important consideration for deciding as to whether reinstatement should be ordered. There is also no allegation by the workmen that the General Manager or any other responsible officer was guilty of ony *molafides* or that they were victimised. Hence after carefully considering the circumstances of the case I am of the npinion that although the termination of the services of these workmen was not justified yet they are not entitled to any relief because of the unnecessary long delay in bringing forward the claim for reinstatement. The management may, however, consider the cases of these workmen sympathetically and offer them re-employment if and when future vacancies occure. In my opinion, it would not be desirable to displace the workmen who have been in the meantime appointed simply to accommodate the workmen who have not been in the service of the mill for any appreciable length of time and who are also responsible for an undue delaying their in bringing forward their claim for reinstatement. I decide this issue accordingly.

Issue No. 2—

The position of the management with regard to the workmen whose names are mentioned in annexure 'B' is that the services of certain workmen were terminated on the ground that they were temporary hands and the workmen whose names are mentioned in annexure 'B' were appointed in the place of those workmen but on reference to the Labour Court, the plea of the management that the workmen whose services had been terminated were temporary hands was not accepted and they were ordered to be reinstated. It is pleaded that the award of the Labour Court had to be implemented and since the workmen whose names are mentioned in annexure 'B' were recruited to fill up those vacancies, these workmen became surplus and so they had to go. The position taken up by the representative of the workmen on the other hand is that the management had appointed some more workmen after the appointment of the workmen whose names are mentioned in annexure 'B' and if as a result of the award of the Labour Court certain workmen became surplus then the management should have complied with the provisions of section 25F of the Industrial Disputes, Act and retrenched only the junior-most workmen. The reply of the management to this plea is that no workmen junior to the workmen whose names are mentioned in annexure 'B' have been retained in service in preferene to them. The plea of the management is that the persons who were appointed later on could not be asked to go because the workmen whose names are mentioned in annexure 'B' were not qualified to fill up those posts. The management have given a chart Ex. M.W. 2/14 giving the qualifications and designations of the posts held by the workmen who were newly engaged in the 1968 and 1969 season, in order to prove that the workmen whose names are mentioned in annexure 'B' do not possess the qualifications required for the posts against which persons junior to them in service have been retained. The representative of the workmen has led no evidence to show that any of the workmen whose names are mentioned in annexure 'B' possess the requisite qualifications and could have been appointed against the posts given in the statement marked Ex. M W. 2/14. Under these circumstances the submission of the management that the workmen whose names are mentioned in annexure (B) had to go as a result of the award of the Labour Court is correct and it cannot, therefore, be said that the termination of their services was not justified. I find this issue in favour of the management.

Issue No. 3—

Shri Gulab Singh' M. W. 1, Labour Officer of the respondent company admits in the his evidence that the Government of India has permitted the respondent mill to give 5 kilogram of sugar to each workman. No distinction is made by the Government as to whether the workman is temporary, seasonal or permanent and whether he is living alone or with familles. The number of family members of a workman is also not taken into consideration. The management of their own accord have evolved a formula for the distribution of sugar to their workmen and give 9 kilogram sugar to the permanent workman while 4½ kilogram is being given to the seasonal and temporary hands although the Government releases a quota of sugar of the rate of 5 kilogram per worker without any regard as to whether he is temporary, seasonal or permanent. In my opinion, the management is not competent to increase or decrease the quantity of sugar to be given to each workman in disregard of the instructions of the Government. The Labour Officer admits that the Government permits giving of 5 kilogram of sugar to each workman and this quantity of sugar must be given to each workman. I decide this issue accordingly.

Issue No. 4—

In view of the Supreme Court decision given in the case of Madras Chillies, Gram and Karyana Merchants Workers Union and reported 1969-1-LLJ-719, it must be held that the workmen are no longer entitled to any incentive bonus over and above; the bonus to which they may be entitled under the Payment of Bonus Act. I, therefore, decide this issue against the workmen.

As a result of my findings above I hold that the workmen employed in the respondent factory are entitled to equal quantity of sugar. All other demands raised by the workmen which have been referred for arbitration are held to be unjustified. I give my award accordingly. No order as to costs.

Dated : 6th November, 1970.

P. N. THUKRAL,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

No. 1613, dated Faridabad, the 12th November, 1970.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Department, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,

Industrial Tribunal, Haryana,
Faridabad.

B. L. AHUJA,

Commissioner for Labour and Employment

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